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09/153,621	09/15/1998	ROGER Q. SMITH	P-US-TN1444	5790
7590	09/12/2006		EXAMINER [REDACTED]	DINH, TUAN T
ADAN AYALA THE BLACK & DECKER CORPORATION 701 E JOPPA ROAD TW199 TOWSON, MD 21286			ART UNIT [REDACTED]	PAPER NUMBER 2841

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 31

Application Number: 09/153,621

Filing Date: September 15, 1998

Appellant(s): SMITH, ROGER Q.

Adan Ayala
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/01/05.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-6 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, Paper No. 29.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated Healey (U.S. Patent 4,480,809).

As to claim 1, Healey discloses an audio-equipment (instrument equipment such as sonar type depth indicating instrument or the like, column 1, lines 7-8) as shown in figures 1-2 comprising:

a housing (10-figure 1, column 2, lines 18);

an audio circuitry inherently to the sonar (not shown) installed within the housing; and

a first protective bar (16, column 2, line 25) flexibly connected (34, column 2, line 59) to the housing (sidewall 24 of housing 10-see figure 1). The bar is protective because it protects the housing from impact from underside of the housing.

As to claim 2, Healey discloses the audio equipment as shown in figures 1-2 further comprising a handle (14, column 2, line 22) attached (see figure 1) to the first protective bar (16).

As to claim 3, Healey discloses the audio equipment as shown in figures 1-2 further comprising a connector assembly (34, column 2, line 59) connecting the first protective bar (16) to the housing (10).

As to claims 4 and 5, Healey discloses the equipment as shown in figures 1-2 wherein the connector assembly (34) comprises a flexible gasket (30-figure 2, column 2, line 49), said flexible gasket disposed between the first protection bar (16) and the housing (sidewall 24 of housing 10).

As to claim 6, Healey discloses the audio equipment as shown in figures 1-2 further comprising a second protective bar (16, column 2, line 25) flexibly connected to the housing (the other side of the housing 10, bracket 12 having two bars 16 connecting by ends of base 14).

(11) Response to Argument

For the above reasons, it is believed that the rejections should be sustained.

Applicant argues:

Applicant relies upon on MPEP 2112, at 2100-51 that the establish inherence, "the extrinsic evidence" must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be recognized by persons of ordinary skill.

- (a) Healey does not disclose "an audio circuitry" by applicant relied upon on MPEP 2112, at 2100-51
- (b) Healey does not show "the protective bar"
- (c) Healey does not disclose "the protective bar flexible connected to the housing."

Examiner disagrees.

Response to argument (a), Healey shows a instrument housing such as a sonar typed depth indicating instrument or the like (column 1, lines 7-8), the instrument housing is a device to product/perform a music (see Merriam Webster's Colligate Dictionary, page 606, column 2, page 607, column 1). The sonar typed instrument device is made of sounds or musical; therefore, the instrument device includes some types of audio circuitry to product the sounds or music. Thus, the instrument device comprises an audio circuitry within an audio the housing to product the sounds or music.

Examiner believes that Healey is teach the instrument device inherently including the audio circuitry that require by the MPEP 2112, at 2100-51, for example: a computer system must have a motherboard as a main board to operate the system, or a motherboard must have a CPU as a main control module or a memory chip, etc...

Response to arguments (b) and (c), Healey shows a bracket (12) having upstanding portions (16) as one of a protective bar flexibly connected (34) to a sidewall (24) of a housing (10), see column 1, lines 47-49. The protective bar (16) will protect the housing, at the very least, from the environmental impact like damaging mechanical

forces of something lifting the device from the side during handling use. Appellant argues that the bar would not protect the device from a following dropped, but such a degree of protection is not claimed.

Further, the device's Healey shows a flexible gasket (30) disposed between the bar (16) and the sidewall of the housing, so the bar (16) flexure and ability connected to the housing by a knob (34), also, the knob is adjust a flexible of the bar when it is connected to the housing.

Respectfully submitted,

Tuan Dinh
August 30, 2006.

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